

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of : **Mail Stop: Petitions Branch**

Andre VAN DYK : Docket No. 2004_1031A

Serial No. 10/500,705 : **Confirmation No. 4374**

Filed July 2, 2004

EXPLOSIVE PRESSURE
WAVE CONCENTRATOR

THE COMMISSIONER IS AUTHORIZED
TO CHARGE ANY DEFICIENCY IN THE
FEES FOR THIS PAPER TO DEPOSIT
ACCOUNT NO. 23-0975

PETITION UNDER 37 C.F.R. § 1.47(b)

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Petition is hereby made under 37 C.F.R. § 1.47(b) to be permitted to proceed with prosecution of the above-identified application absent the signature of the sole inventor, Andre Van Dyk. The grounds for the petition are set forth below and supported by the accompanying documentary evidence.

The U.S. firm of Wenderoth, Lind & Ponack, L.L.P. (Wenderoth) represents the applicant of the above-identified application and receives its instructions from McCallum Rademeyer & Freimond (McCallum), the South African attorneys for the assignee of the present application, NXCO International Limited.

As is evidenced from a letter from McCallum to Wenderoth dated December 6, 2004 (**Exhibit A**), unsuccessful attempts have been made to obtain the signature of Mr. Van Dyk on the Declaration. Attached correspondence from McCallum to Mr. Van Dyk dated July 26, 2004; September 2, 2004; September 20, 2004; October 14, 2004; December 14, 2004; and December 17, 2004 (**Exhibit B**) provides evidence that numerous attempts were made to have Mr. Van Dyk sign the Declaration, but that no response has been received from Mr. Van Dyk. In addition, the

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correspondence in **Exhibit B** provides evidence that a full copy of the application was sent to Mr. Van Dyk along with the Declaration form for his signature.

As indicated in the letter from McCallum to Wenderoth dated December 6, 2004 (**Exhibit A**), at the time of the invention described in the above-identified application, Mr. Van Dyk was in the full time employment of NXCO Mining Technologies Ltd, a South African company owned by NXCO International Limited, and in terms of the corporate government rules, all inventions and other intellectual property vested in NXCO International Limited. Mr. Van Dyk signed such an agreement to this effect and, more pertinently, has assigned all rights in the above-identified application directly to NXCO International Limited by an Assignment of Patent Application dated December 5, 2002 (**Exhibit C**).

Accordingly, the Assignment of Patent Application dated December 5, 2002 (**Exhibit C**) establishes NXCO's proprietary interest in the above-identified application. Further, NXCO states that the filing of the above-identified patent application is necessary to preserve the rights of the parties and to prevent irreparable damage. On the enclosed Declaration, the general manager of NXCO International Limited, Mr. Edward Walenty Tota, has signed the Declaration on behalf of NXCO International Limited. Mr. Tota is an authorized representative of the corporation.

The refusing inventor's last known address is as follows:

Mr. Andre VAN DYK
223 Eland Street
Wierda Park
Centurion
0002 Pretoria
SOUTH AFRICA

Additionally attached hereto (**Exhibit D**) is a copy of the executed Declaration and Reply to Notification of Missing Requirements filed February 1, 2005.

Petition Under 37 C.F.R. § 1.47(b)
U.S. Application No. 10/500,705

In view of the foregoing, it is believed that all of the necessary information has been provided which is necessary to grant this petition. The Special Program Examiner is invited to contact the undersigned by telephone if it is felt that there are any issues remaining which must be resolved before the granting of this petition.

A check for the petition fee of \$200.00 under 37 C.F.R. § 1.17(h) is attached.

Respectfully submitted,

Kenneth Fields

Kenneth W. Fields
Registration No. 52,430

KWF/abm
Washington, D.C. 20006-1021
Telephone (202) 721-8200
Facsimile (202) 721-8250
February 1, 2005

EXHIBIT A



McCALLUM RADEMEYER & FREIMOND

Intellectual Property Law: Patents and Trade Marks

Physical Address:

Maclyn House, 7 June Avenue, Randburg, Johannesburg
Telephone (011) 789-1046 Telefax (011) 787-4516 Docex 5 Randburg
website: www.mrf.co.za e-mail: monty@mrf.co.za

Postal Address:

Box 1130, Randburg,
2125, South Africa

**URGENT
BY FACSIMILE**

6 December 2004

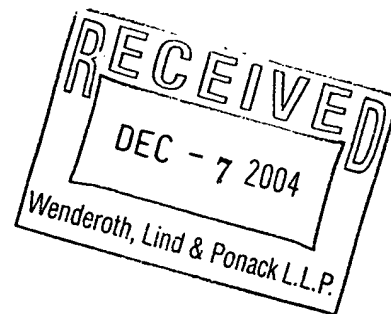
Wenderoth, Lind & Ponack, L.L.P.
2033 K Street
N.W. Suite 800
Washington D.C.
20006
USA

Attention : Mr. M. Huppert

Your Ref: 2004-1032A/MSH/00491
Our Ref: P.20317/MAJR

Dear Mr. Huppert

US National Phase Patent Application based on PCT/ZA02/00211
Entitled : EXPLOSIVE PRESSURE WAVE CONCENTRATOR
In the name of : NXCO INTERNATIONAL LIMITED



VANDYK

I refer to earlier correspondence regarding this application.

As you know the declaration is outstanding. The application was filed in the name of the invention Andre van Dyk and at all it has been the intention for the application to be assigned to NXCO International Limited of Saffrey Square, Suite 205, Bank Lane, Nassau, Bahamas.

The application has been filed on the instructions of NXCO and NXCO has met the cost thereof.

The American application is based on an international application which in turn claimed priority from a South African provisional patent application. The international application and the South African application were also filed in the name of Andre van Dyk but under the direction of NXCO.

Andre van Dyk was in the full time employment of NXCO Mining Technologies (Pty) Ltd a South African company owned by NXCO International Limited, and in terms of the corporate government rules all inventions and other intellectual property vested in NXCO International Limited. Andre van Dyk has signed an agreement to this effect and, more pertinently, in respect of the current invention and patent application, assigned all rights directly to NXCO International Limited in 2002.

A dispute has arisen between Andre van Dyk and NXCO Mining Technologies (Pty) Ltd. This does not have to do with ownership of the invention but with the alleged misuse and unauthorized appropriation by Andre van Dyk of assets and facilities belonging to NXCO Mining Technologies (Pty) Ltd. It is probably due to this dispute that Andre van Dyk has refused to sign the declaration and the assignment.

Please note that this application is one of five similar USA patent applications and in each instance the situation is the same.



A number of letters have been directed to Andre van Dyk requesting him to sign the outstanding documentation but to no avail. No response at all has been received. Some of the letters were sent by registered mail. All letters have been accepted by the addressee and no letters have been returned.


Do you think the preceding information is adequate for the preparation of a petition to the patent office to overcome the lack of the declaration? Please let me have your comments.

I attach a copy of a typical assignment document, executed by Andre van Dyk, and ask whether this would be adequate to substantiate the claim of NXCO International Limited to ownership of the American patent application.

I look forward to hearing from you.

You should, at the same time, give me an estimate of the cost of preparing and filing the petition, and of recording the assignment.

Yours sincerely



McCALLUM RADEMEYER & FREIMOND
Per: M.A.J. RADEMEYER

/jes

EXHIBIT B

**McCALLUM RADEMEYER & FREIMOND**

Intellectual Property Law: Patents and Trade Marks

Physical Address:

Maclyn House, 7 June Avenue, Telephone (011) 789-1046 Telefax (011) 787-4516 Docex 5 Randburg
Randburg, Johannesburg website: www.mrf.co.za e-mail: monty@mrf.co.za

Postal Address:

Box 1130, Randburg,
2125, South Africa

26 July 2004

Mr. A. van Dyk
223 Elands Street
Wierda Park
Centurion

Our Ref: NXCO/MAJR

Dear Mr. van Dyk

VARIOUS FORMS FOR SIGNATURE – NXCO USA PATENT APPLICATIONS

National phase patent applications, based on the international applications identified below, have recently been filed in the USA. As you are the named inventor I enclose, for signature by you, in respect of each application a declaration form and an assignment document. Please return the original signed forms to me as soon as possible.

I will shortly send you similar forms for the US national phase application based on PCT/ZA02/00209.

Yours sincerely

McCALLUM RADEMEYER & FREIMOND

Per: M.A.J. RADEMEYER

/jes

cc: NXCO – Mr. E. Tota

USA National Phase Applications based on:

PCT/ZA02/00208

PCT/ZA02/00210

PCT/ZA02/00211

PCT/ZA02/00212

**MCCALLUM RADEMEYER & FREIMOND****Intellectual Property Law: Patents and Trade Marks****Physical Address:**Maclyn House, 7 June Avenue, Telephone (011) 789-1046 Telefax (011) 787-4516 Doccx 5 Randburg
Randburg, Johannesburg website: www.mrf.co.za e-mail: moaty@mrf.co.za**Postal Address:**Box 1130, Randburg,
2125, South AfricaBY FACSIMILE

012 653 3603

CONFIRMATION BY MAIL

2 September 2004

Mr. A. van Dyk
223 Elands Street
Wierda Park
Centurion

Our Ref: P20317/MAJR

Dear Sir

US NATIONAL PHASE PATENT APPLICATION BASED ON PCT/ZA02/00211**Entitled : EXPLOSIVE PRESSURE WAVE CONCENTRATOR****In the name of : NXCO INTERNATIONAL LIMITED**

We refer to earlier correspondence regarding this patent application and again enclose a declaration and power of attorney form for use in this case, for signature by you, where indicated, and an assignment document, again, for signature by you, in terms whereof the application is assigned to NXCO International Limited.

We ask you please to sign the documents as a matter of urgency and to return the signed documents to us forthwith. If the documents are not duly signed the validity of the patent application will be placed in jeopardy.

Yours faithfully

MCCALLUM RADEMEYER & FREIMOND

Per: M.A.J. RADEMEYER

/jes

**MCCALLUM RADEMEYER & FREIMOND****Intellectual Property Law: Patents and Trade Marks****Physical Address:**

Maclyn House, 7 June Avenue, Randburg, Johannesburg
Telephone (011) 789-1046 Telefax (011) 787-4516 Docex 5 Randburg
website: www.mrf.co.za e-mail: monty@mrf.co.za

Postal Address:

Box 1130, Randburg,
2125, South Africa

BY REGISTERED MAIL

20 September 2004

Mr. A. van Dyk
223 Elands Street
Wierda Park
Centurion

Our Ref: P20317/MAJR

Dear Sir

US NATIONAL PHASE PATENT APPLICATION BASED ON PCT/ZA02/00211
Entitled : EXPLOSIVE PRESSURE WAVE CONCENTRATOR
In the name of : NXCO INTERNATIONAL LIMITED

We enclose a copy of our letter of 2 September 2004 and again enclose a declaration and power of attorney form, and an assignment document, for signature by you, in order to complete all of the formalities relating to this application. Please ensure that the signed documents are returned to us forthwith. As previously stated if the documents are not duly filed at the American patent office the validity of the patent application will be placed in jeopardy.

Yours faithfully

MCCALLUM RADEMEYER & FREIMOND

Per: M.A.J. RADEMEYER

/jes

MCCALLUM RADEMEYER & FREIMOND**Intellectual Property Law: Patents and Trade Marks****Physical Address:**Mactya House, 7 June Avenue,
Randburg, JohannesburgTelephone (011) 789-1046 Telefax (011) 787-4516 Docex 5 Randburg
website: www.mrf.co.za e-mail: monty@mrf.co.za**Postal Address:**Box 1130, Randburg,
2125, South Africa**BY REGISTERED MAIL**

14 October 2004

Mr. A. van Dyk
223 Elands Street
Wierda Park
Centurion

Our Ref: P20293/MAJR

Dear Sir

**FIVE US NATIONAL PHASE PATENT APPLICATIONS BASED ON PCT APPLICATIONS
In the name of : NXCO INTERNATIONAL LIMITED**

We attach copies of our letters of 20 September 2004 and again call on you to sign the declaration/power of attorney forms and assignments forms, previously sent to you. These are urgently required for use in the American applications.

If the forms are not timeously filed the validity of the American applications will be placed in jeopardy. This will be due purely to your actions, or lack of action, and our client will have no alternative but to hold you accountable for its losses.

Yours faithfully

MCCALLUM RADEMEYER & FREIMOND
Per: M.A.J. RADEMEYER

/jes

monty

From: monty [monty@mrf.co.za]
 Sent: Friday, December 17, 2004 09:04
 To: 'aor@wol.co.za'
 Subject: FW: URGENT - US APPLICATIONS



INT1076 Andre van Dyk.doc (51 ...



INT1072 Andre van Dyk.doc (63 ...



INT1073 Andre van Dyk.doc (52 ...



INT1074 Andre van Dyk.doc (94 ...



INT1075 Andre van Dyk.doc (120...



P20309 Jones assignment.doc (3...



P20301 declaration and power o...



P20301 Jones assignment.doc (3...



P20309 declaration and power o...



P20325 Forms page 5 of 5.jpg (...



P20293 Forms.jpg (346 KB)



P20293 Forms - 2.jpg (243 KB)



P20317 Forms page 1 of 5.jpg (...



P20317 Forms page 2 of 5.jpg (...



P20317 Forms page 3 of 5.jpg (...



P20317 Forms page 4 of 5.jpg (...



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P20325 Forms page 3 of 5.jpg (...



P20325 Forms page 4 of 5.jpg (...

McCallum Rademeyer & Freimond
 Intellectual Property Law Specialists
 Tel: +27 11 789 1046 Fax: +27 11 787 4516
 monty@mrf.co.za

This e-mail may be confidential and/or privileged. Only the intended recipient may access or use it. If you are not the intended recipient, please delete this e-mail and notify us promptly. We use virus scanning software but exclude all liability for viruses or similar in any attachment.

Please acknowledge or reply to this e-mail promptly.

-----Original Message-----

From: monty [mailto:monty@mrf.co.za]
 Sent: Tuesday, December 14, 2004 10:15
 To: 'aor@mweb.co.za'
 Subject: URGENT - US APPLICATIONS

Attention : Mr. Andre van Dyk

This is a final attempt to ask for your cooperation in completing the filing requirements for the American patent applications.

We again enclose:

- a) a full copy of each specification and claims;
- b) a declaration/power of attorney form for each case for signature by you; and
- c) an assignment document for each case for signature by you.

Please sign the form (b) and (c) and fax copies the to us by return. The original signed form should be posted to us.

If we do not have the forms by 17 December 2004 we will be compelled to instruct our correspondent, for each application, to file a petition at the US Patent Office in order to regularize the matter. This will cost a significant amount and, as previously stated, NXCO will thereafter proceed to recover costs from you.

Yours sincerely

Monty Rademeyer

McCallum Rademeyer & Freimond
Intellectual Property Law Specialists
Tel: +27 11 789 1046 Fax: +27 11 787 4516
monty@mrf.co.za

This e-mail may be confidential and/or privileged. Only the intended recipient may access or use it. If you are not the intended recipient, please delete this e-mail and notify us promptly. We use virus scanning software but exclude all liability for viruses or similar in any attachment.

Please acknowledge or reply to this e-mail promptly.

Outgoing mail is certified Virus Free.
Checked by AVG anti-virus system (<http://www.grisoft.com>).
Version: 6.0.809 / Virus Database: 551 - Release Date: 12/9/2004

Outgoing mail is certified Virus Free.
Checked by AVG anti-virus system (<http://www.grisoft.com>).
Version: 6.0.816 / Virus Database: 554 - Release Date: 12/14/2004



EXHIBIT C

McCALLUM, RADEMEYER & FREIMOND
REF: INT.1075

ASSIGNMENT OF PATENT APPLICATION

THIS DEED WITNESSES:

(1) THAT:

- (a) THE ASSIGNOR(S) is/are **VAN DYK, Andre of 223 Eland Street, Wierda Park, Centurion, Pretoria, 0002, South Africa**
- (b) THE ASSIGNEE(S) is/are **NXCO INTERNATIONAL LIMITED of Saffrey Square, Suite 205, Bank Lane, Nassau, Bahamas.**
- (c) THE INVENTION is an invention entitled
Pressure
EXPLOSIVE SHOCKWAVE CONCENTRATOR (now allocated)
- (d) THE PATENT APPLICATION is International Patent Application (No. PCT/ZA02/00211) in respect of THE INVENTION:

(2) THAT THE ASSIGNOR(S) hereby assign(s) to the ASSIGNEE(S), in respect of all countries:

- (a) THE PATENT APPLICATION,
- (b) THE INVENTION, and
- (c) the right to apply for patents in respect of THE INVENTION

the assignment taking effect on the filing date of the PATENT APPLICATION

(3) AND THAT THE ASSIGNOR(S) hereby undertake(s) to execute all documents that may be required to make this assignment effective, to effect registration of THE PATENT APPLICATION in the name of the ASSIGNEE(S), and to enable THE ASSIGNEE(S) to apply for patents anywhere based on the PATENT APPLICATION, all at the expense of THE ASSIGNEE(S).

Signed by THE ASSIGNOR(S) at Centurion
this 5th day of December 2002.

(Witnessed)

(Witnessed)

ANDRE VAN DYK

EXHIBIT D

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of : **Confirmation No. 4374**
Andre VAN DYK : **Mail Stop: PCT**
Serial No. 10/500,705 : **Attorney Docket No. 2004_1032A**
Filed July 2, 2004 :

EXPLOSIVE PRESSURE WAVE CONCENTRATOR
[Corresponding to PCT/ZA02/00211
Filed December 17, 2002]

COPY

REPLY TO NOTIFICATION OF MISSING REQUIREMENTS
UNDER 35 USC 371

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

In response to the PTO Notification of Missing Requirements Under 35 USC 371 dated November 1, 2004, submitted herewith is a Declaration for the above application executed by the inventors.

Also enclosed are the PTO surcharge of \$65.00 required by 37 CFR 1.492(e), and a copy of the PTO notice.

It is respectfully submitted that the application is now complete, and early indication thereof is now requested.

Respectfully submitted,

Andre VAN DYK

By Kenneth W. Fields
Kenneth W. Fields
Registration No. 52,430
Attorney for Applicant

KWF/abm
Washington, D.C. 20006-1021
Telephone (202) 721-8200
Facsimile (202) 721-8250
February 1, 2005

Rev. 1-10-03

Effective March 1998

DECLARATION AND POWER OF ATTORNEY FOR U.S. PATENT APPLICATION

☐ Original ☐ Supplemental ☐ Substantive ☒ PCT ☐ DESIGN

As a below named inventor, I hereby declare that my residence, post office address and citizenship are as stated below next to my name; that I verily believe that I am the original, first and sole inventor (if only one name is listed below) or an original, first and joint inventor (if plural inventors are named below) of the subject matter which is claimed and for which a patent is sought on the invention entitled:

TELE-DESTRUCTIVE PRESSURE WAVE CONCENTRATOR

of which is described and claimed in:

☐ the attached specification, or
☐ the specification in application Serial No. _____, filed _____, and with amendments through _____, or
☒ the specification in International Application No. PCT/ZA02/00211, filed December 17, 2002, and as amended on (if applicable).

I hereby state that I have reviewed and understood the content of the above identified specification, including the claims, as amended by any amendment(s) referred to above.

I acknowledge my duty to disclose to the Patent and Trademark Office all information known to me to be material to patentability as defined in Title 37, Code of Federal Regulations, §1.56.

I hereby claim priority benefits under Title 35, United States Code, §119 (and §172 if this application is for a Design) of any application(s) for patent or inventor's certificate listed below and have also identified below my application for patent or inventor's certificate having a filing date before that of the application on which priority is claimed:

COUNTRY	APPLICATION NO.	DATE OF FILING	PRIORITY CLAIMED
South Africa	2001/5467	January 3, 2002	YES
South Africa	2001/5465	January 3, 2002	YES
South Africa	2001/5463	January 3, 2002	YES
South Africa	2001/5462	January 3, 2002	YES
South Africa	2001/5461	January 3, 2002	YES
South Africa	2001/5458	January 3, 2002	YES

I hereby claim the benefit under Title 35, United States Code §120 of any United States application(s) listed below and, insofar as the subject matter of each of the claims of this application is not disclosed in the prior United States application in the manner provided by the first paragraph of Title 35, United States Code §112, I acknowledge the duty to disclose information material to patentability as defined in Title 37, Code of Federal Regulations, §1.56 which occurred between the filing date of the prior application and the national or PCT international filing date of this application:

E. J. J.

APPLICATION SERIAL NO.	U.S. FILING DATE	STATUS: PATENTED, PENDING, ABANDONED

And I hereby appoint Michael R. Davis, Reg. No. 25,194; Matthew M. Jacob, Reg. No. 25,154; Warren M. Clark, Jr., Reg. No. 33,367; Nile Podorsky, Reg. No. 33,145; Charles L. Watts, Reg. No. 33,142; Michael E. Huppert, Reg. No. 40,268; and Jeffrey R. Filipek, Reg. No. 41,471, who together constitute the firm of WENDEROOTH, LIND & PONACK, L.L.P., as well as any other attorneys and agents associated with Customer No. 000513, to prosecute this application and to transact all business in the U.S. Patent and Trademark Office connected therewith.

I hereby authorize the U.S. attorneys and agents named herein to accept and follow instructions from McCallum, Rademeyer & Freimond as to any action to be taken in the U.S. Patent and Trademark Office regarding this application without direct communication between the U.S. attorneys and myself. In the event of a change in the persons from whom instructions may be taken, the U.S. attorneys named herein will be so notified by me.

Direct Correspondence to:		Direct Telephone Calls to:	
CUSTOMER NO. 000513		WENDEROOTH, LIND & PONACK, L.L.P. 2033 "K" Street, N.W., Suite 200 Washington, D.C. 20006-1021 Phone (202) 731-8200 Fax (202) 731-8230	
Full Name of First Inventor	FAMILY NAME VAN DYK	FIRST GIVEN NAME Andre	SECOND GIVEN NAME
Residence & Citizenship	CITY Pretoria	STATE OR COUNTRY South Africa	COUNTRY OF CITIZENSHIP South Africa
Post Office Address	ADDRESS 223 Eland Street, Wierda Park, Centurion, 0002 Pretoria, South Africa		
Full Name of Second Inventor	FAMILY NAME	FIRST GIVEN NAME	SECOND GIVEN NAME
Residence & Citizenship	CITY	STATE OR COUNTRY	COUNTRY OF CITIZENSHIP
Post Office Address	ADDRESS	CITY	STATE OR COUNTRY CITY CODE

I further declare that all statements made herein of my own knowledge are true and that all statements of information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

Further, as noted in the attached petition, due to the sole inventor's refusal to sign the Declaration, the assignee of the application, NXCO International Limited, is acting as the 37 C.F.R. 1.47(b) applicant. Acting as the authorized agent of NXCO International Limited is Edward Walsley Tom, the General Manager of NXCO International Limited, who is signing the Declaration on behalf of the non-signing inventor.

EW

Full Name of Person Signing on Behalf of Non-Signing Inventor	FAMILY NAME TOTA	FIRST GIVEN NAME Edward	SECOND GIVEN NAME Walenty
Title	General Manager of NXCO International Limited		
Post Office Address	Saffrey Square, Suite 205, Bank Lane, Nassau, Bahamas		

37 CFR 1.47(b)
Applicant Signing
on Behalf of Non-
Signing Inventor


Edward Walenty TOTA

Date 24 January 2005

The above application may be more particularly identified as follows:

U.S. Application Serial No. 10/500,705 Filing Date July 2, 2004

Applicant Reference Number P20317/MAJR Any Docket No. 2004-1032A

Title of Invention EXPLOSIVE PRESSURE WAVE CONCENTRATOR

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